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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 726

FRANK SUTTON, On behalf of himself and others similarly situated,

Appellant,

vs.

TOM ADAMS, as Secretary of State of the State of Florida, and
EARL FAIRCLOTH, as Attorney General of the State of Florida,

Appellees.

Appeal from the Supreme Court of the State of Florida

MOTION TO AFFIRM

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellees move this Court to affirm the lower court's ruling in this cause, pursuant to Rule 16(b) of the Revised Rules of the Supreme Court of the United States,

on the grounds that the appeal herein does not present a substantial Federal question and that the judgment of the Supreme Court of the State of Florida rests on an adequate non-Federal basis.

STATEMENT

The appellant Frank Sutton, on behalf of himself and others similarly situated, filed suit seeking a declaratory decree to determine his rights as a licensed liquor dealer in the State of Florida under the provisions of Section 99.161 (1)(b), Florida Statutes. Mr. Sutton alleged, essentially, that the application of said statute to himself and others similarly situated was unconstitutional because of the prohibition on him and others similarly situated prohibiting a licensed liquor dealer from making, directly or indirectly, a contribution of any nature to any political party or to any candidate for nomination for or election to any political office in the state. The initial complaint further alleged that there was an unreasonable classification because of a proviso added to the statute in 1965 which stated the following:

> "provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations."

Based on the foregoing, the appellant herein argued in the lower court and the Supreme Court of the State of Florida the unreasonable classification existed because a

licensed liquor dealer cannot make a contribution, but if he is a licensed liquor dealer and is a member of a country club he can so make a contribution within the meaning of the proviso added to the statute in 1965. The circuit court in entering its order on the complaint for declaratory decree found, essentially, that the amendment added by the 1965 session of the Legislature of Florida is unconstitutional for the reason that no reasonable classification did in fact exist as contended by the appellant herein, and the circuit court declared subsection (1)(b) of Section 99.161, Florida Statutes, 1965, null, void and inoperative. (See appellants' Appendix C.)

On appeal to the Supreme Court of Florida, the Supreme Court reversed the decision of the circuit court in favor of the validity of the statute and held that a reasonable relationship did exist between the purpose of the statute and the classes excluded from its prohibitions. (See appellants' Appendix D.)

ARGUMENT

1.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

The main thrust of the appellants' argument is that the statute in question, which prohibits a licensed liquor dealer from "making any contribution of any nature" in effect completely defranchises a licensed liquor dealer in that he cannot make a "contribution" in the form of a

speech, thereby taking away his freedom of speech, in the form of money, materials, supplies or make loans in support of a candidate for election or nomination, or in any other form which is considered to be something of value; and, further, in the ultimate form of making a "contribution" by voting for a candidate. Consistently, throughout the proceedings in this case, both at the trial level and on appeal, the appellant argues that the statement "or make directly or indirectly, any contribution of any nature" must mean the prohibition of all the beforelisted contributions for a candidate or nominee for office. The appellant, however, has not considered to the doctrine of statutory construction that statutes closely related must be read in *pari materia* and the Court's attention is directed to Section 99.161 (2)(a) and (b), which provides the following:

> "(a) No person shall contribute to a candidate for election or nomination to political office in the state, directly or indirectly, in moneys, material, supplies, or by way of loan, in an amount or value in excess of one thousand dollars in any primary or general election.
>
> "(b) No person shall give, furnish or contribute moneys, material, supplies or make loans in support of a candidate for election or nomination, through or in the name of another, directly or indirectly, in any primary or general election. The solicitation from and contributions by candidates and party executive committees to any religious, charitable, civic, eleemosy-

nary or other causes or organizations established primarily for the public good is expressly prohibited; provided that it shall not be construed as a violation of this section for a candidate to continue regular personal contributions to religious, civic or charitable groups of which he is a member or to which he has been a regular contributor for more than six months."

It is apparent from the foregoing quoted subsection of law, which is found in the same section of law as the subsection under assault, that when the two subsections are read in *pari materia* the word "contribution" means "monies, materials, supplies, loans, or something of value" and does not relate to a man's right to vote or his right to freedom of speech, so the only reasonable conclusion that the Court can place on the meaning of the word "contribution" found in Section 99.161 (1)(b), Florida Statutes, must be found within the four corners of all the law under consideration.

In this regard, the Florida Supreme Court was eminently correct in stating that pursuant to the constitution of the state of Florida, the legislature is empowered by Article III, section 26, to pass laws to prevent all undue influence from improper practice in the conduct of elections, and in so far as the appellant based his attack on alleged discrimination between liquor licenses and other business endeavors, the situation is one governed by principles well stated in an earlier opinion of the Florida Supreme Court in *State v. Cochran,* 114 So. 2d 797, at page 800, as follows:

"We should also retain in our thinking the proposition that the regulation and control of the alcoholic beverage business is peculiarly a legislative function. In this connection, as in all similar situations, when the legislative branch of the government exercises a legislative power in the form of a duly enacted statute or ordinance it is not the function of a court to explore the wisdom or advisability of the enactment in order to bring its enforceability into question. To this end the limits of the court's authority is to measure the validity of the legislative enactment by the requirements of the controlling law. If those standards are met the legislation should be upheld."

Your appellees submit, and would never argue to the contrary, that the appellant has the right to express his political desires and thoughts under his right to free speech, but he does not have the right to be a licensed liquor dealer. As more succinctly stated by the learned Honorable Mr. Justice Holmes in his descriptive dictum in *McAuliffe v. City of New Bedford*, 155 Mass. 216, 29 N.E. 517, "The petitioner (a policeman) may have a constitutional right to talk politics but he has no constitutional right to be a policeman."

The appellant also contends, however, that the proviso attached to Section 99.161 (1)(b), Florida Statutes, is unconstitutional in that no reasonable classification exists where the prohibitions in the statute do not apply to members of country clubs, social and fraternal associations and cultural organizations. This reasoning must fall since it is

common knowledge that country clubs, social, fraternal and cultural organizations often have liquor licenses for the dispensing of alcoholic beverages to the membership of the clubs and members of such clubs do not actively hold themselves out as persons holding a license for the sale of intoxicating beverages, but by virtue of being a member, officer, or director in such organizations, they would be caught up in the prohibition of the statute were it not for the saving proviso exempting them from such prohibition. The obvious intent of the legislature was to prohibit persons who hold a license for the sale of intoxicating beverages from making contributions to any political party or to any candidate for nomination for or election to any political office in the state.

2.

THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

The only remaining question to be treated in the appellant's jurisdictional statement is whether or not the prohibitions under Section 99.161 (1)(b), Florida Statutes, violate the appellant's constitutional rights under the Fourteenth Amendment for the reason that the practical effect of the statute would limit and restrict a licensed liquor dealer who might otherwise be qualified for public office from attempting to obtain election to same because he would be unable to employ his personal funds to advance his candidacy and he would be unable to receive

political contributions from other licensed liquor dealers similarly situated who may sympathize with his views and platform as a candidate. This question is effectively put to rest by this Court in the case of *Snowden v. Hughes,* 321 U.S. 1, 88 L. Ed. 497, where this Court held the right to become a candidate for state office is a right or privilege of state citizenship, not national citizenship, which alone is protected by the privileges and immunities of the Fourteenth Amendment.

With regard to the appellant's rights of equal protection clause of the Fourteenth Amendment of the Constitution of the United States with respect to the constitutional right of a candidate to run for public office, the Court stated in *Snowden,* supra, the following:

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. Taylor & Marshall v. Beckham, 178 US 548, 44 L ed 1187, 20 S Ct 890, 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion. Cave v. Missouri, 246 US 650, 62 L ed 921, 38 S Ct 334, as we reaffirm it now."

The ruling in *Snowden,* supra, has been cited with approval as late as 1967 in *Bynum v. Burns,* 379 F. 2d 229 (8th Circ.).

CONCLUSION

Your appellees respectfully conclude that the appellant has presented no substantial question for the decision of this Court and the judgment below rests on an adequate non-Federal basis and the decision of the Supreme Court of Florida should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Affirm was served, by mail, on Milton E. Grusmark, Esq., 1674 Meridian Avenue, Suite 311, Miami Beach, Florida 33139, attorney for Appellant, this .... day of December, 1968.

Of Counsel